



The Legal Framework relating to Security in the Ports of Nautical Tourism

2nd ADRIATIC MARITIME LAW CONFERENCE, May 2017, Opatija, Croatia

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General Framework

- SOLAS Convention – XI-2 Chapter – Special Measures to Enhance Maritime Security
- ISPS Code – International Ship and Port Facility Security Code
- Regulation (EC) No 725/2004 on enhancing ship and port facility security
- Directive 2005/65/EC on enhancing port security
- Security Protection of Maritime Vessels and Ports Act
- Maritime Demesne and Maritime Ports Act
- Private Security Act
- By-Law on conditions and methods of enforcing technical protection
- By-Law on arrangement and classification of ports of nautical tourism
- ...

General Nautical Data

- State Bureau for Statistics (2016)
 - **139** ports of nautical tourism – 71 marinas and 69 other ports
 - Overall space volume = 3.7 m² , over 17.400 mooring berths
 - **Continuous berth: 13.422 vessels** (little more than half are motor yachts, little less than half are sailing yachts)
 - **Transit vessels:** 3 counties (Split-Dalmatian, Šibenik-Knin and Zadar) = over 135.000, 13,1% annual increase; in total: **over 198.000 vessels**, 8,6% annual increase
 - Flags: majority under Croatian flag, other dominant flags: Austria, Germany, Italy and Slovenia
 - Total income: 796 million HRK; 70% berthing (4% annual increase)
- eCrew system (Ministry of Tourism, January-September 2016)
 - Nautical guests – 410.541 arrivals and 2,84 million overnight stays

Practical Issues

- Ports of nautical tourism that employ private protection service providers:
 - Control of entry and exit
 - **Right to prevent free access to the port area?**
 - Protection of infrastructure
 - Protection of guests' property
 - **Does this include boats, vessels *etc.* anchored in the port area, and to what extent?**
 - Protection of people and property through constant supervision and control
 - **Scope of rights and powers to act? Responsibility and liability for poor performance or non-performance?**
 - **Is it necessary to provide both the physical and technical protection?**

Security Protection of Maritime Vessels and Ports Act (2012) (i)

- Art. 2, para 1, p. 6 – definition of security protection
 - A system of preventive measures aimed to protect a vessel and port from threats of intentional unlawful conduct
 - **What about negligent conduct or omission resulting in damage?**
- Art. 25
 - Security in the special purpose ports (including the ports of nautical tourism) => responsibility of the concessionaire
 - Necessary to establish a port security protection service organization

Security Protection of Maritime Vessels and Ports Act (2012) (ii)

- Art. 26
 - Port of nautical tourism security risk assessment plan => responsibility of the concessionaire (in accordance with the Annex 4)
 - To be approved by the Ministry of the Sea, Transport and Infrastructure (prior opinion by the Ministry of Interior)
- Art. 27
 - Port security protection plan
 - Based on the risk assessment, cannot be prepared by the same organization in charge of risk assessment preparation
 - To be approved by the Ministry of the Sea, Transport and Infrastructure (prior opinion by the Ministry of Interior)
- Art. 29 – security levels (1 – basic level, 2 – increased threat, 3 – high probability of threat occurring)

By-Law on arrangement and classification of ports of nautical tourism (2008)

- Art. 2 – Port of nautical tourism definition:
 - *Business-functional complex in which a legal or physical person conducts business and provides tourism services in nautical tourism and other services in function of tourist spending (commercial, catering and other)*
- Art. 11 – general conditions, including: secure movement of tourists and staff
- Porter/reception services (0-24h) and seamen-protection service requirements, if ports are categorized for specific categories, such as ports of nautical tourism
 - **What is „seamen-protection service“? Contractual based definition or general legal requirements?**
 - **General liability in accordance with *lex generalis*, or contractual determination of liability division?**

Private Security Act (2010) (i)

- Categories and conditions with regard the provision of private security services
- Art. 27 *et cet* – physical protection
 - Rights and powers: identification, issuing warnings and orders, limitation of movement, bodily and property examination, use of force (including lethal weapons) ...
 - Gradual, proportional, selective, exceptional and necessary use of force
- Art. 43 *et cet* – technical protection
 - Anti-theft, unlawful entry, unlawful entry of forbidden materials... means and mechanisms ...

Private Security Act (2010) (ii)

- Art. 9 – Responsibility and Liability
 - Damage compensation, private security service provider's employees, contractual and non-contractual (third party) liability, conduct contrary to the Act and other relevant legislation – **strict liability principle**
 - Recourse right against employees – if intent or gross negligence
- **Problem 1: status of employees -> technical protection contractors = possibility to use their services under the contract of result**
- **Solution: general contractual and non-contractual liability norms in Obligations Act**
- **Problem 2: so-called „*dangerous activities*“ as opposed to the necessity to prove unlawful conduct?**



Thank you for attention!